The Development of Labor Legislation in Germany

By Hugo Sinzheimer, Ph.D.
Frankfurt-a-Main
Translated by Daniel B. Shumway, Professor of German Philology, University of Pennsylvania[1]

I

THE development of labor legislation in Germany before the war was dominated by the principle that the relation of employer to employe is not merely a private affair between these parties but a matter of public concern as well. On this account the shaping of labor conditions was increasingly withdrawn from private jurisdiction, which follows the free volition of the individual, and made subject to social regulation. There were two organs of the social will which made these contractual relations the subject of social regulation—the state and labor organizations.

The interference of the state in the free play of social forces in the domain of labor in Germany before the war is well known. This interference appears particularly in the three great legislative enactments which make for the protection of the workers, for wage guaranty and for workingmen's insurance. The protection of the workers can be traced back to the idea that the working power of man is not only an individual but also a social asset. It is, therefore, the duty of the law to withdraw the control of this asset from the untrammeled jurisdiction of the employer and even from the control of the worker himself, by force if necessary. In innumerable statutes, constituting a continuous legal development, the life, health and morality of the workman, especially in the domain of industry, have been guaranteed against the dangers of his occupation and in certain industries the hours of labor, especially for women and children, have been limited by law.

The wage guaranty is based on the belief in the economic function of wages. The wage demand of the worker differs from other demands. His wage is the foundation of his existence. Therefore legal measures are needed to guarantee the worker his undiminished wage, in so far as the demand for wages is unattachable. The wage attachment act of 1869 determined the non-attachability of wages. According to this, all wage demands under 1,500 marks a year are unattachable. Today the limit has been raised to 2,500 a year. The legal enactments referring to the wage guaranty stipulate that apart, from certain prescribed deductions in the interest of the worker himself, the employer can not make deductions from the wages, in so far as it is unattachable. Thus the employer can not in general charge up counter demands against the wage. Moreover, the wage of the industrial worker must be paid in cash. The retention or the forfeiting of pay for the purposes of compensating for loss due to the breaking of contracts on the part of the worker may not exceed one week's pay.

Workingmen's insurance comprises state insurance against the dangers of sickness, accident and invalidity. It

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assures him in addition an old age pension. Through the insurance act of 1913 salaried employes are insured in a similar manner, in so far as they do not fall under the provisions of workingmen's insurance. The claim of the workingman and salaried employe to insurance is not looked upon as an ordinary insurance claim, but as a claim to state protection (*Fürsorge*). Here the view obtains that the labor of the worker is not only a contribution to the employer, but to the social life of the community as well. Through his contract the laborer serves the employer directly, but society indirectly; hence the duty of society to give the laborer an equivalent in return. This equivalent is the protection in the cases named.

Social control of work through organizations of workers finds expression in *Arbeitstarifverträgen* (wage agreements). They express the thought that not only an individual but all the workers in a given trade are interested in the economic labor conditions, and that, therefore, the determination of wage scales can not be entrusted to individuals, but should be a matter of collective bargaining. The fight for the unhindered right to organize long lay at the basis of political struggles in Germany. To be sure, through § 152 of the *Reichsgewerbeordnung* (national trade regulations), all probitions of and penalties against industrial combinations were repealed, so that only servants and certain classes of rural workers closely related to servants still lacked the legal right to organize. The practice of courts and boards of control, however, based on § 153 of the *Reichsgewerbeordnung*, which provided special penalties for the attempt on the part of organizations to force outsiders to join, was such that the legal right to organize existed only on paper. This was true especially of the treatment of picketing. Still, the unions succeeded even before the war in applying the principle of wage agreements to many industries. To be sure, large industries with but very few exceptions were not affected by this development prior to the war. The social autocracy of the captains of industry, who followed the autocratic political methods of "kaiserdom," overthrown by the revolution, were able to hold out successfully against the modern principle of collective bargaining. It was, therefore, no wonder that a very strong social tension existed in Germany when the war broke out. The social principle of protection of the worker through law was not sufficient to take care of the collective interests of dependent labor. In addition to welfare work on the part of the state the German workingmen demanded a voice, both individually and collectively, not only politically in the affairs of the nation, but socially in their relations as workers.

II

The war not only destroyed human lives in the zone of fighting, but caused the ruin of workers behind the lines in a thousand ways. The social protection of the state gave way before the feverishly increased need of production. Many regulations designed to protect workingmen were suspended. The working capacity of women and children was exploited to the utmost, the working day was lengthened intolerably. The effects of this social "freedom" were all the more deadly because no compensation was possible in the sphere of consumption for the loss of working power in the sphere of production. Here were laid the foundations for the terrible exhaustion of the German people that occurred after the final defeat. On

the other hand, there developed here the germs of the social transformations which we find after the war.

In the first place combinations of workingmen were recognized more and more. Strikes had to be prevented. To suppress them by force was hardly possible and was politically unwise. The trade unions proved more and more to be necessary members of the economic and social life of the community. It became clear that their functions were of a constructive, not destructive nature. In this time of stress political authorities had to take them into account, for the behavior of the masses depended largely on the attitude of the government towards the unions. Thus we see how the political influence of the unions increased during the war. Police control over labor organizations was lessened by no longer considering them to be political organizations. Paragraph of the *Reichsgewerbeordnung* (national trade regulations) mentioned above, was annulled. Under these circumstances the method of peaceful agreement between unions and employers gradually came to be the prevailing one. Wage agreements entered fields in which prior to the war one-sided dictation on the part of the employers ruled with almost unlimited power. The wage agreement became the starting point for the development of labor legislation by bringing about through negotiations a regulation of the labor contract which law was not able to offer.

In addition we find during the war a new idea penetrating labor legislation, an idea for which, to be sure, the public mind was somewhat prepared and which had been realized in wage agreements, but still had received no legal sanction—an idea which was to be of far-reaching significance for the later period. During the war employes of large establishments demanded a voice in the drawing up of wage contracts. This demand started with the new power which the *Hilfs Dienst Gesetz* (auxiliary service law) had created. This law required all men under sixty to work in the interest of war production. Workers lost their freedom of labor contract since they were not allowed to change their place of employment at will, but were forced to remain, unless they could show special reasons for leaving. This principle of binding the workingman to his place of employment needed a safety valve. This was created by the obligatory introduction of workingmen's committees which were granted certain rights. Previously workingmen's committees had been made mandatory by law only in mining operations. In so far as other workingmen's committees existed they had no practical or effective rights of coöperating with their employers. Now they became mandatory in all industries. Their duty was to settle controversies between employers and employes in industry. If they failed to bring about an agreement, then arbitration committees, created for individual industries in different localities, were to render the final decision. These committees were the forerunners of the later *Betriebsräte* (works councils). While the social protection of the employe was thus diminished during the war, the social self-determination of the workingman and salaried employe gained ground in industrial establishments through organizations of workers. The autocracy of the employer was, therefore, already overthrown before the revolution started.

III

The revolution hastened the development of labor legislation and matured new forms of *Arbeitsverfassung*

(labor constitutions). As a matter of principle the nature of the wage agreement remained untouched, but its content and its character were essentially influenced by the current of the revolution and its consequences. This is self-evident because the practical result of the revolution was to increase the influence of the laboring classes in the state and in the economic life of the nation, a movement which is by no means at an end. In this phenomenon is evidenced the fact that no political revolution is any longer possible today without far-reaching social consequences.

First of all the idea of the social regulation of labor conditions by the state was confirmed anew and more fully developed in many important respects. The protective regulations suspended during the war at once became effective again. The eight-hour day for industrial workers was ordered by the act of November 23, 1918, on the basis of the decree of the council of *Volksbeauftragten* (people's commissioners) and put into effect for salaried employes in the same way by the law of March 18, 1919. The maximum amount for agricultural workers was placed by the Temporary Rural Workers' Statutes of December 20, 1918, and January 23, 1919, in four months of the year at an average of eight hours daily, in another four months at ten and in the remaining four months at eleven hours. At the same time in all these cases a regulation of the rest intervals in the working day was brought about. To the already existing regulations against night work there was added through the decree of the council of *Volksbeauftragten* (people's commissioners) of December 23, 1918, the important regulation against night work in all large bakeries and confectionaries. The regulations regarding servants, compelling them to work, still in part administered by the police, were abolished. Servants now come under the general regulation of *Das Bürgerliche Gesetzbuch* (Code of Civil Laws) concerning servant contracts. The conditions of agricultural workers which were partly affected by the antiquated servant law were subjected to a more modern revision by the above-mentioned Temporary Rural Workers' Statutes.

The social regulation of labor conditions by labor organizations through wage agreements was given a more definite legal status by the abolition of all limitations of the right of combination. Wage agreements also received for the first time through the important statute of December 23, 1918, the legal basis which they previously lacked. The two fundamental ideas on which the law rests are: first, that the specifications of a wage agreement cannot be changed by individual contracts between employer and employe; second, that by special decree of the Minister of Labor they may be applied to such employers and employes as did not participate in the drawing up of the wage agreement. According to the law previously in force in Germany it was possible for deviations from the stipulations of a wage agreement to be agreed upon in labor contracts between employers and employes. By the above-mentioned law such deviations were made impossible. The pernicious activity of outsiders who did not join in such a wage agreement, and, therefore, constituted a continual menace to a well-ordered wage policy, could not be legally prevented under pre-revolutionary laws. Now that the Minister of Labor has the right to extend wage agreements to those outside the province of such contracts, these wage agreements have acquired the force of

a statute, conferring the power to enforce uniform regulations throughout the whole industry.

Finally through the important *Betriebsrätegesetz* (Works Council Law) of February 4, 1920, which was passed against great opposition, the idea that laborers and salaried employes in industrial plants should have a voice in determining labor conditions—an idea which had already appeared in the germ in the workingmen's committees of the *Hilfsdienst* (auxiliary service)—was given a legal status in industry. These works councils replaced the workingmen's committees in all establishments where at least twenty workers, *i.e.*, laborers and salaried men, are employed. For smaller concerns *Betriebsobmänner* (industrial arbiters) are to be chosen who have powers similar to the works councils. The *Betriebsräte* are the representatives of the workers as a whole in the industries when the matter is one of common interest. In so far as special interests of workingmen and salaried employes require representation, group representatives are chosen from the respective councils. In considering the duties of these industrial representatives the socio-political relations are to be distinguished from the economico-political relations. The socio-political duties have to do with labor conditions. In all these questions the industrial representatives have a deciding vote, especially in formulating regulations in the plants. Particularly important is the right of the industrial representatives to a voice in the matter of the discharge of workmen, which is regulated by § 84 of the law. The right to a voice in the suspension of work exists only to the extent that general lines of conduct governing the procedure of suspension are to be agreed upon between industrial representatives and employers.

The economico-political duties were the ones most contested in the framing of the law. The law did not recognize the right of the industrial representatives to a voice in the management of the plant. The works council law only opens the way towards giving the industrial representatives an insight into the management of the establishment and thus places them legally in a position to support the policy of the management in order to bring about the highest efficiency and the greatest possible economy in the operation of the plant. For this purpose the employer is under obligation to give information concerning all processes affecting the labor contract and the work of the employes. He has in addition the duty of making a quarterly report on the standing and progress of the enterprise and of the industry in general, and concerning the output and the probable need of laborers in particular. At the request of the industrial representatives the heads of establishments that regularly employ 300 workingmen and 50 salaried employes must furnish and explain a financial statement. Moreover, in enterprises having a board of directors one or two members of the works council have the right to represent in the board the interests and demands of the workers and also present their views with respect to the organization of the plant. When, according to the works council law, an agreement between the industrial representatives and the employers is required and such can not be brought about, an arbitration committee composed of equal numbers of representatives of the employers and of the workers, and under the chairmanship of a disinterested party, must render the decision. The works council law is the most important piece of labor legislation since the revolution. It is

a part of the great legislation which is to deal with industrial councils and is provided for in article 165 of the German Constitution. The fundamental idea of this council legislation consists in allowing economic interests to find expression in a special economic constitution. The organs of this economic constitution shall not have legislative power. The supreme political power resides as before in parliament. The organs of the economic constitution can, however, order their own affairs in so far as the law allows. They may stimulate and aid political bodies and they have the right to take the initiative in proposing legislation to parliament with the understanding that parliament is legally bound to deal with such proposals as with its own bills. In all these organs of the economic constitution the representatives of the workers have an equal voice, so that a greater right to participate in economic affairs is thus conceded to the workingman. Up to the present of all the organs planned in the council constitution, only its chief organ, viz., the *Reichswirtschaftsrat* (National Economic Council) has been created, in addition to the works councils. Thus economic affairs have been made public affairs and the great process of transforming private economy more and more according to social economic points of view has been propitiously begun in special legal forms upon the soil of the new political democracy.

In the meantime an extensive development of labor laws is being prepared by a special commission in the Labor Ministry of the Republic whose task it is to formulate a uniform labor law for all industries and for all workingmen. The confusion that now exists in Germany, as a result of the historical development of labor laws, is to be eliminated, and the differences in the regulations for various industries and classes of workers, are to be done away with. Instead, a simple, clear, uniform law shall make the conditions of dependent labor in all domains conform to the new social spirit. Thus the development of labor laws is everywhere the basis of the new legislative development in Germany.